

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

JIMMY L. AQUILA
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-165
Case No. 75-141

S.S.A. No.

EMPLOYMENT DEVELOPMENT DEPARTMENT

Referee's Decision No. S-UCX-14296

The Department appealed from the referee's decision which held the provisions of sections 1256 and 1260(a) of the Unemployment Insurance Code are not applicable to the claimant's claim for benefits based upon UCX wage credits. We have considered written argument which has been submitted.

STATEMENT OF FACTS

The claimant enlisted in the United States Air Force in the latter part of November 1972. He remained in the Air Force until he was separated under honorable conditions on August 9, 1974.

Before enlisting in the Air Force, the claimant had been employed in a service station in Weed, California. He was discharged from this job on November 5, 1972. He thereupon applied for unemployment benefits. The Department issued a determination disqualifying the claimant from benefits on the ground that he had been discharged from his most recent employment for misconduct connected with his work and he would continue to be disqualified for benefits until he earned five times his weekly benefit amount (\$325) in bona fide employment and filed another claim. The claimant then joined the Air Force. He appealed that determination to a referee who affirmed

the Department's determination in a decision dated January 4, 1973. The claimant appealed that referee's decision to the Appeals Board. The board affirmed the decision.

After separation from the Air Force, the claimant filed a new claim for unemployment benefits and established a benefit year effective August 10, 1974. The claimant's base period consisted of "federal military wage" credits earned as a result of his service in the Air Force, and his claim was processed as a UCX claim. The Department determined that the claimant's service in the Armed Forces of the United States did not satisfy the requirement that he earn \$325 or more in bona fide employment and therefore he continued to be disqualified under the provisions of sections 1256 and 1260(a) of the code. The claimant appealed to a referee who reversed the Department and found in favor of the claimant. The Department has appealed that decision to the board.

REASONS FOR DECISION

The Congress has enacted legislation which provides distinctive treatment and benefits for federal military personnel (5 U.S.C. 8521). That system of benefits has been entitled the "UCX program" of unemployment compensation for specified ex-servicemen established by subchapter II of Chapter 85 of Title 5 of the United States Code. Under section 8508 of that subchapter, the Secretary of Labor has been granted the right to promulgate regulations necessary to carry out the provisions of the UCX program. Pursuant to that authority, the Secretary of Labor has duly promulgated definitive regulations which are found in the Federal Register (20 C.F.R. 614 et seq. (1974)). These regulations are binding on all of the states in administering the UCX program, and they have the full force and effect of law (see K. Davis, Administrative Law Treatise, paragraphs 5.01-11 (1958)). Additionally, the Secretary of Labor has published a detailed manual to interpret and carry out the provisions of the regulations.

We look then to the law, regulations and rules applicable to the case now before us.

Section 8506(a) of Title 5 of the United States Code provides for unemployment benefits for ex-servicemen. Eligibility for such benefits is required to be determined

under the provisions of the unemployment insurance law of the state to which wage credits have been assigned, which in this case is California.

Section 8521(a) of Title 5 of the United States Code sets out the criteria which determine what military service is "Federal Service."

Title 20, Chapter V, of the Code of Federal Regulations, provides in pertinent part:

"§ 614.1 Definitions.

"As used in this part, unless the context clearly indicates otherwise--

* * *

"(b) 'Ex-serviceman' means an individual who has performed Federal military service.

"(c) 'Federal military agency' means any of the Armed Forces of the United States, including the U.S. Air Force, Army, Coast Guard, Marine Corps, and Navy.

"(d) 'Federal military service' means a period of active service, including active duty for training purposes, in the Armed Forces, if--

"(1) Such service was continuous for 90 days or more or was terminated in less than 90 days because of an actual service-incurred injury or disability; . . ."

"§ 614.11 Determination of entitlement.

"(a) States. Except for Federal findings of a Federal military agency or the U.S. Veterans Administration and schedules of remuneration which are final and conclusive under § 614.8 the State agency of a State to which an individual's Federal military service and wages have been assigned under § 614.3 or transferred as provided in § 614.13 promptly shall determine such individual's entitlement to compensation and pay such compensation in

the same amount, on the same terms, and subject to the same conditions as the compensation which would be payable to such individual if such service and wages had been included as employment and wages under the State unemployment compensation law."

"§ 614.13 Interstate Plans.

"The Interstate Benefit Payment Plan and the Interstate Arrangement for Combining Employment and Wages (Part 616 of this chapter) shall apply where appropriate, to individuals filing claims under the UCX program. For these purposes Federal military service and wages shall be considered employment and wages under the unemployment compensation law of the State to which they are assigned or reassigned."

Although it does not have the full force and effect of law, the Employment Security Manual sets forth a concurring provision at section 6640 and provides:

"A State agency is required to pay UCX benefits in the same amounts, on the same terms, and subject to the same conditions as if the Federal military service and wages had been included as employment and wages under the State UI law. . . ."

The California Unemployment Insurance Code in section 1260(a) provides that an individual disqualified under section 1256 of the code shall be ineligible to receive unemployment compensation benefits until he has, subsequent to the act which caused the disqualification and his registration for work, performed services in bona fide employment for which remuneration is received equal to or in excess of five times his weekly benefit amount.

The facts in the instant case establish that the claimant is an ex-serviceman who served for more than 90 days in continuous federal military service, was discharged under honorable conditions and received "federal military wages" within the meaning of the provisions of the law, regulation and rules previously cited. It is also clear under section 614.13 of Title 20, Code of Federal Regulations, that the claimant's

federal military service must be considered "employment" and that his "federal military wages" must be considered "wages" under the unemployment compensation law of this state. There remains the question of whether such "employment" was "bona fide" within the meaning of section 1260(a) of the California Unemployment Insurance Code. We are constrained to hold that it is. To do otherwise, however cogent the reasons might be, would merely serve to frustrate the clear thrust and intent of the Federal Congress to provide unemployment benefits to ex-servicemen under section 8506(a) of Title 5 of the United States Code, who have been discharged under honorable conditions, to assist in their return to civilian pursuits. We are not prepared to stand on narrow distinctions to frustrate that objective, particularly where the California Unemployment Insurance Fund is virtually unaffected and the Federal Government pays these federal benefits. Accordingly, we find that the claimant satisfied the period of ineligibility for benefits which had previously been assessed against him under sections 1256 and 1260(a) of the code.

Our decision in the case before us is restricted to insuring that claimants who are entitled to UCX benefits receive them in accordance with that federally funded program. It is not now our intention to disturb the application or viability of our holding in Appeals Board Decision No. P-B-159 which applies to those cases which do not fall within the purview of the federal law and regulations under which UCX cases are administered.

DECISION

The decision of the referee is affirmed as to effect but modified as to reasoning. The claimant has satisfied the disqualification imposed under sections 1256 and 1260(a) of the code. Benefits are payable to the claimant provided he is otherwise eligible.

Sacramento, California, April 10, 1975.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

EWING HASS, Chairman

JOHN B. WEISS

DON BLEWETT

CARL A. BRITSCHGI

HARRY K. GRAFE